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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JULIA HUBBARD and KAYLA GOEDINGHAUS) Case No.: 2:22-CV-7957-FAR-MAA
vs.) DEFENDANT BENJAMIN TODD
TRAMMELL S. CROW JR., et al. Plaintiff(s),) ELLER'S NOTICE OF MOTION
Defendant(s).) AND MOTION TO DISMISS THE
) COMPLAINT PURSUANT TO FED.
) R. CIV. P. 12(b)(6) and 8(a)
)
) DATE: April 28, 2023
) TIME: 1:30 p.m.
) CRTM: 6B
)
) Honorable Fernando L. Aenlle-Rocha

1 **TO THIS HONORABLE COURT, AND TO ALL PARTIES AND THEIR
2 ATTORNEYS OF RECORD—**

3 PLEASE TAKE NOTICE that on April 28, 2023, or as soon thereafter as the
4 matter may be heard, Defendant Benjamin Todd Eller, will, and hereby does, move
5 this Court an Order dismissing the Complaint for failure to set forth factual
6 allegations that plausibly establish a cognizable claim for relief against Defendant
7 Benjamin Todd Eller. This motion is made pursuant Rules 8(a) and 12(b)(6) of the
8 Federal Rules of Civil Procedure on the grounds that Plaintiffs' shotgun pleading
9 approach to the Complaint fails to meet the minimum pleading standards set forth
10 by Fed. R. Civ. P. 8(a), and that it further fails to set forth allegations that
11 sufficiently plead a cognizable claim for relief against Defendant Benjamin Todd
12 Eller such that dismissal is warranted pursuant to Fed. R. Civ. P. 12(b)(6).

13 This motion will be made before the Honorable Fernando L. Aenlle-Rocha,
14 United States District Judge, in Courtroom 6B at the 1st Street Courthouse located at
15 350 West 1st Street, Los Angeles, California 90012.

16 This motion is based upon this Notice, the attached Memorandum of Points
17 and Authorities, all pleadings, records, and other documents on file with the Court in
18 this action, and upon such oral and/or documentary evidence as may be presented at,
19 before, and after the hearing of this motion.

20
21 DATED: March 14, 2023

CAMERON JONES LLP

22 /s/ Indira J. Cameron-Banks

23 Indira J. Cameron-Banks

24 Terrence M. Jones

25 *Attorneys For DEFENDANT*
26 Benjamin Todd Eller

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1 **I. INTRODUCTION**

2 In an attempt to capitalize on their traumatic life experiences, many of which
 3 are alleged to be at the hands of their partner Rick Hubbard, Plaintiffs Julia Hubbard
 4 (Hubbard) and Kayla Goedinghaus (Goedinghaus) (collectively “Plaintiffs”) filed a
 5 shotgun pleading Complaint that takes aim at no less than thirty individuals and
 6 entities, but fails to set forth any cognizable claim whatsoever for a violation of
 7 federal criminal statutes, namely provisions of the Trafficking Victims
 8 Reauthorization Act (“TVPRA”), 18 U.S.C. § 1589 and/or § 1591, or the Racketeer
 9 Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. 1962(c) and (d), let
 10 alone any a cognizable claim against Defendant Benjamin Todd Eller (“Eller”)
 11 specifically for any such violations. Accordingly, Eller moves to dismiss the
 12 Complaint in its entirety pursuant to Fed. R. Civ. P. 8(a) and 12(b)(6).¹

13 The shotgun pleading Complaint should be dismissed for failure to comply
 14 with Rule 8(a) requirements for a Complaint to set out how each defendant is alleged
 15 to have violated Plaintiffs’ legal rights. The “everyone is liable for everything”
 16 allegations upon which the four causes of action for violations of the TVPRA and
 17 RICO rest, fall short of the Rule 8(a) pleading requirements, and warrant dismissal of
 18 the Complaint. Additionally, the 300+ paragraphs of the Complaint set forth
 19 disconnected, conclusory and implausible allegations that fail to give rise to any
 20 cognizable claim for relief against Eller and should also be dismissed pursuant to Fed.
 21 R. Civ. P. 12(b)(6).

22 **II. RELEVANT BACKGROUND**

23 Plaintiffs initiated this civil action in the Central District of California with a
 24 Complaint asserting four separate causes of action for violation of criminal statutes,

25
 26
 27 ¹ Eller specifically and expressly reserves the right to raise additional grounds to
 28 challenge the Complaint pursuant to other provisions of Fed. R. Civ. P. 12(b) should
 they become applicable after an amendment of the Complaint, transfer to a different
 venue, or any other change in the procedural posture of this case.

1 namely the TVPRA and RICO, against Eller, along with other defendants that have
 2 also moved to dismiss the Complaint. The allegations set forth in the Complaint
 3 against Eller fall into the following categories²:

- 4 • **Conclusory Statements that Eller Controlled “the Venture” and/or “the**
Enterprise”: ¶ 7 (Eller’s work was “key to Rick’s control of [Plaintiffs]”), ¶120
 5 (Eller “took the initial steps in creating the Venture”), ¶ 303 (“The Venture relied
 6 on the essential work of [Eller]”), ¶ 310 (Eller “engaged in such wire fraud in
 7 order to force Plaintiffs to engage in commercial sex acts.”), ¶ 332 (“the
 8 Enterprise relied on the work of Eller”), and ¶ 341 (“the object of the conspiracy .
 9 . . . to the financial benefit of . . . Eller”)
- 10 • **Eller Was Paid To Provide Business Consulting to Rick Hubbard:** ¶ 116
 11 (“Rick began using Eller’s services as a ‘business consultant’ to advice him in
 12 Chet Holmes methods”), ¶ 119 (“Eller failed to help Rick form a successful
 13 legitimate business”), ¶ 126 (containing an image from Rick Hubbard to his own
 14 business, LLC in Texas -- “TXEcoloft – “for Dr. Eller”)
- 15 • **Eller Is Factually and Legally Precluded from Securing, Procuring,**
Providing, Prescription Drugs for Anyone: ¶ 14 (“As a psychologist, Eller was
 16 unable to write prescriptions on his own”), and ¶ 139 (“Because Eller was not a
 17 medical doctor, he was unable to write prescriptions that were essential for the
 18 Venture”).
- 19 • **Eller Did Not Secure, Procure, Provide, or Deliver Prescription Drugs to**
Plaintiffs: ¶11 (“Rick was fraudulently obtaining drugs in order to force
 20 [Plaintiffs] to commit sex acts”), ¶ 15-16 (the Medical Doctor Defendants spoke to
 21

25
 26 ² Eller does not concede that any of these allegations or the documents embedded in
 27 the allegations are true or accurate, but recognizes for the purposes of this Motion, the
 28 Court will accept well-pled factual allegations as true and construe them in the light
 most favorable to the Plaintiffs. *See Reese v. BP Exploration (Alaska) Inc.*, 643 F.3d
 681, 690 (9th Cir. 2011).

1 Plaintiffs and “Medical Doctor Defendants prescribed drugs” to Plaintiffs), ¶ 124
 2 (“Rick would then procure high doses of drugs . . . kept . . . in what he called his
 3 prescription bar”).

- 4 **• An Unverified, Unsigned Seemingly Altered and Incomplete Document about**
5 Goedenhaus’s Reporting of Medications She Took: ¶140 (embedding
 6 an unverified, unsigned and seemingly altered document purportedly
 7 stating undisputed facts that Goedenhaus reported being “on the following
 8 medications: Zoloft, Prazosin Amblify” to Eller)
- 9 **• A Seemingly False, Unverified, Altered and Incomplete Document about Rick**
10 Hubbard’s Custody of Hubbard’s Child After She Leaves the Venture: ¶ 132
 11 (embedding an unverified and seemingly altered document purportedly
 12 submitted to a court on or about October 3, 2019 by Eller about Hubbard having
 13 custody of her child); ¶ 51 (“Hubbard . . . escaped the Venture in November 2018)
- 14 **• Conclusory Statement that Eller Held Himself Out as Hubbard’s**
15 Psychologist to Unidentified Third Part(ies): ¶ 135 (“Eller held himself out as
 16 Hubbard’s psychologist”).
- 17 **• Rick Hubbard Threatened to Call Eller:** ¶ 163 (“Rick repeatedly told
 18 Hubbard . . . a call from Mitchell (as well as Eller) would quickly cause the police
 19 to disregard what Hubbard said”); ¶ 293 (“Rick would use Eller as a threat”).
- 20 **• Plaintiffs Had Limited Phone Call Conversations with Eller:** ¶10 (Eller and
 21 Hubbard “spoke only twice”), ¶11 (Plaintiffs “informed Eller Rick was
 22 fraudulently obtaining drugs in order to force them to commit sex acts”), ¶283
 23 (“Goedinghaus began having phone calls with Eller once a week beginning in
 24 January or February 2019”).

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1 **III. THE COMPLAINT SHOULD BE DISMISSED PURSUANT TO FED. R.
2 CIV. P 8(a) AND 12(b)(6) FOR FAILURE TO SET FORTH
3 ALLEGATIONS THAT ESTABLISH ANY COGNIZABLE CLAIMS
4 FOR RELIEF AGAINST ELLER**

5 **A. The Shotgun Pleading Warrants Dismissal of the Complaint For
6 Failure to Comply with Fed. R. Civ. P 8(a) Pleading Requirements.**

7 The Federal Rules of Civil Procedure require a Complaint to contain a short
8 and plain statement “of the grounds for the court's jurisdiction” and “of the claim
9 showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(1)-(2). “Shotgun
10 pleadings are pleadings that overwhelm defendants with an unclear mass of
11 allegations and make it difficult or impossible for defendants to make informed
12 responses to the plaintiff's allegations.” *Sollberger v. Wachovia Sec., LLC*, No.
13 SACV 09-0766-AG-ANx, 2010 U.S. Dist. LEXIS 66233, *11 (C.D. Cal. June 30,
14 2010) “Shotgun pleadings are contrary to the Federal Rules of Civil Procedure,
15 corrosive to the adversarial process, and consume courts' already scarce judicial
16 resources.” *Tuinstra v. Bonner Cty.*, 2021 U.S. Dist. LEXIS 116252, *6 (citing
17 *Barmapov v. Amuial*, 986 F.3d 1321, 1324 (11th Cir. 2021))

18 There are at least four common types of shotgun pleading in a Complaint, and
19 the instant complaint falls into two of the four types of shotgun pleading – (1)
20 drafting a Complaint “replete with conclusory, vague, and immaterial facts not
21 obviously connected to any particular cause of action” and (2) “asserting multiple
22 claims against multiple defendants without specifying which of the defendants are
23 responsible for which acts or omissions, or which of the defendants the claim is
24 brought against.” *Weiland v. Palm Beach Cnty. Sheriff's Office*, 792 F.3d 1313, 1323
25 (11th Cir. 2015) (setting forth four common types of shotgun pleading in complaints).

26 “Shotgun pleading style deprives Defendants of knowing exactly what they are
27 accused of doing wrong . . . and this defect alone warrants dismissal.” *See* Fed. R.
28 Civ. P. 41(b). *Sollberger*, 2010 U.S. Dist. LEXIS 66233, *13. The Ninth Circuit has
affirmed dismissal of a complaint based on shotgun pleading, where the complaint

1 failed “to state clearly how each and every defendant is alleged to have violated
 2 plaintiffs' legal rights” where they continued “to make ‘everyone did everything’
 3 allegations.” *Destfino v. Reiswig*, 630 F.3d 952, 958 (9th Cir. 2011).

4 Here the Complaint states four separate causes of action – (1) Violation of
 5 TVPRA, 18 U.S.C. § 1591 (sex trafficking), (2) Violation of TVPRA 18 U.S.C. §
 6 1589 (labor trafficking), (3) Violation of RICO 18 U.S.C. § 1962(c) (Pattern of
 7 Racketeering Activity), and (4) Violation of RICO 18 U.S.C. § 1962(d) (RICO
 8 Conspiracy). Each and every cause of action is supported by an allegation that all of
 9 the 300+ paragraphs preceding the claim are “repeat[ed] and reallege[ed]” and
 10 followed by a limited series of allegations that that “Defendants” collectively violated
 11 the operative criminal statute through a threadbare recitation of the legal elements
 12 required to establish a violation of the criminal statute. The 300+ paragraphs
 13 preceding each cause of action are “replete with conclusory, vague, and immaterial
 14 facts not obviously connected to any particular cause of action.” *Weiland*, 792 F.3d at
 15 1323. As such the Complaint should be dismissed in its entirety and Plaintiffs
 16 directed “to state clearly how each and every defendant is alleged to have violated
 17 Plaintiffs' legal rights” so that each defendant knows “exactly what they are accused
 18 of doing wrong.” *See Destfino*, 630 F.3d at 958, *Sollberger*, 2010 U.S. Dist. LEXIS
 19 66233, *13.

20 **B. The Complaint Should Be Dismissed Pursuant to Fed. R. Civ. P.
 21 12(b)(6) for Failure to Allege Facts That Give Rise to Any
 22 Cognizable Claim Against Eller for Violation of the TVPRA or
 23 RICO Statutes.**

24 “A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) for
 25 failure to state a claim upon which relief can be granted ‘tests the legal sufficiency of
 26 a claim.’” *Conservation Force v. Salazar*, 646 F.3d 1240, 1241–42 (9th Cir. 2011)
 27 (*quoting Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001)). A complaint must (1)
 28 “contain sufficient allegations of underlying facts to give fair notice and to enable the
 opposing party to defend itself effectively,” and (2) “plausibly suggest an entitlement

1 to relief, such that it is not unfair to require the opposing party to be subjected to the
 2 expense of discovery and continued litigation." *Starr v. Baca*, 652 F.3d 1202, 1216
 3 (9th Cir. 2011).

4 When determining whether a claim has been stated, the Court accepts as true
 5 all well-pled factual allegations and construes them in the light most favorable to the
 6 plaintiff. *Reese*, 643 F.3d at 690. However, the Court need not "accept as true . . .
 7 allegations that are merely conclusory, unwarranted deductions of fact, or
 8 unreasonable inferences." *In re Gilead Scis. Sec. Litig.*, 536 F.3d 1049, 1055 (9th Cir.
 9 2008) (internal quotation marks and citations omitted).

10 A complaint "must contain sufficient factual matter, accepted as true, to 'state a
 11 claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678
 12 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A claim is
 13 facially plausible when it "allows the court to draw the reasonable inference that the
 14 defendant is liable for the misconduct alleged." *Id.* "[T]o survive a motion to
 15 dismiss, the non-conclusory factual content, and reasonable inferences from that
 16 content, must be plausibly suggestive of a claim entitling the plaintiff to relief." *Moss*
 17 *v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). Dismissal under Rule
 18 12(b)(6) is proper when the complaint either (1) lacks a cognizable legal theory or (2)
 19 fails to allege sufficient facts to support a cognizable legal theory." *Somers v. Apple,*
 20 *Inc.*, 729 F.3d 953, 959 (9th Cir. 2013).

21 As set forth herein, the instant Complaint fails to set forth facts sufficient to
 22 support the finding of liability under any cognizable legal theory. Accordingly, the
 23 complaint should be dismissed.³

25 ³ Dismissal without leave to amend is proper when "it is absolutely clear that the
 26 deficiencies of the complaint could not be cured by amendment," *Karim-Panahi v.*
Los Angeles Police Dep't, 839 F.2d 621, 623 (9th Cir. 1988) (internal quotation
 27 marks omitted), or when the Court is satisfied that the deficiencies of the complaint
 28 could not possibly be cured by amendment. *Jackson v. Carey*, 353 F.3d 750, 758 (9th
 Cir. 2003).

1 **1. The Complaint Fails to Set Forth Factual Allegations**
 2 **Sufficient to Establish a Cognizable Claim against Eller for**
 3 **Violation of TVPRA Provisions 18 U.S.C. § 1591 or §1589.**

4 Under 18 U.S.C. 1595(a), Plaintiffs may bring a civil action against either (1)
 5 the perpetrator of a violation of §1591 or §1589, and/or (2) a beneficiary who
 6 “knowingly benefits, financial or by receiving anything of value from participation in
 7 a venture which that person knew or should have known has engaged in an act in
 8 violation of” §1591 or §1589. 18 U.S.C. § 1595(a)(emphasis added).

9 As an initial matter, the Complaint alleges violations of the First Cause of
 10 Action, violation of 18 U.S.C. § 1591(a)(sex trafficking) and the Second Cause of
 11 Action, violation of 18 U.S.C. § 1589 (labor trafficking), based on shotgun pleading
 12 “everyone did everything” approach that falls short of the Fed. R. Civ. P Rule 8(a)
 13 pleading requirements, making it impossible to discern what any defendant, including
 14 Eller, did to perpetrate a violation of any statute, or how any defendant, including
 15 Eller, is a beneficiary from the participation of a venture that violated either statute.
 16 On this basis alone, the Complaint should be dismissed. *See Destfino*, 630 F.3d at
 17 958, *Sollberger*, 2010 U.S. Dist. LEXIS 66233, *13.

18 **a. Plaintiffs Fails to Allege Any Facts Giving Rise to**
 19 **a Cognizable Claim Against Eller for Violation of**
 20 **18 U.S.C. § 1591(a).**

21 To be liable as a “perpetrator” of a violation of § 1591(a), a defendant must
 22 have “(i) knowingly; (ii) in interstate or foreign commerce; (iii) recruit[ed], entic[ed],
 23 harbor[ed], transport[ed], provid[ed], obtain[ed], maintain[ed], patronize[d], or
 24 solicit[ed] by any means a person; (iv) knowing, or, in reckless disregard of the fact,
 25 that means of force, threats of force, fraud or any combination of such means will be
 26 used; (v) to cause the person to engage in a commercial sex act.” See 18 U.S.C. §
 27 1591(a); *Noble v. Weinstein*, 335 F. Supp. 3d 504, 515 (S.D.N.Y. 2018) A
 28 “commercial sex act” is not any sex act, as the TVPRA defines it as a sex act

1 specifically performed on account of “anything of value [being] given to or received
 2 by any person.” 18 U.S.C. § 1591(e)(3).

3 In this case there are no factual allegations whatsoever to plausibly conclude
 4 that Eller ever “recruited, enticed, harbored, transported, provided, obtained,
 5 maintained, patronized or solicited” Plaintiffs to engage in a commercial sex act that
 6 he knew was being performed by force or threats of force, let alone “knowingly”
 7 engaged in such conduct. *See United States v. Todd*, 627 F.3d 329, 334 (9th Cir.
 8 2010)(“What the statute means to describe, and does describe awkwardly, is a state of
 9 mind in which the knower is familiar with a pattern of conduct . . . [t]he statute
 10 requires . . . that the defendant know in the sense of being aware of an established
 11 *modus operandi* that will in the future cause a person to engage in prostitution.”)

12 Aside from unexplained conclusory allegations that Eller somehow controlled
 13 “the Venture” (Comp. ¶¶ 7, 120, 303, 310, 332, 341), there are no factual allegations
 14 that Eller “caused” Plaintiff’s to engage in a commercial sex act. Indeed the
 15 allegations, if taken as true, confirm that Eller had no knowledge of Plaintiff’s
 16 purported commercial sex acts, and had no ability whatsoever to cause them to
 17 engage in such conduct. (Comp. ¶¶ 11, 14-16, 51, 124, 132, 139)

18 There are no allegations that Eller ever met the Plaintiffs. There are no
 19 allegations that Eller ever housed or transported the Plaintiffs. There no allegations
 20 that Eller ever patronized or solicited Plaintiffs to engage in any acts whatsoever,
 21 much less any sex acts (commercial or otherwise). There are no allegations Eller ever
 22 promised anything to any of the Plaintiffs, or withheld anything from Plaintiffs.
 23 There are no allegations that Eller engaged in any *quid pro quo* arrangement with
 24 Plaintiffs for them engage in any sex acts in exchange for something of value.

25 There are no allegations that Eller caused the Plaintiffs to engage in any sex
 26 act, much less a *commercial* sex act. Indeed, the Complaint alleges that it was Rick
 27 Hubbard who obtained drugs to somehow force Plaintiff to commit unspecified sex
 28 acts that are not alleged to be commercial sex acts. (Comp. ¶11) The Complaint

1 further confirms that Eller never procured or provided drugs to Plaintiffs, and that it
 2 would be a legal and factual impossibility for him to do so. (Compl. ¶¶ 11, 14-16,
 3 124, 139)

4 Moreover, the absence of any non-conclusory factual allegations that Eller had
 5 any knowledge whatsoever of Plaintiffs' purported engagement in commercial sex
 6 acts, highlights the implausibility – indeed impossibility – for him to be liable for a
 7 violation of §1591(a) under a “beneficial liability” theory.

8 As set forth by § 1595, beneficial liability requires a defendant to knowingly
 9 benefit (by receiving anything of value) from participating in a “venture” that the
 10 defendant knew or should have known has engaged in an act in violation of”
 11 §1591(a). 18 U.S.C. § 1595(a)(emphasis added). 18 U.S.C. § 1591(e)(4) and (6)
 12 clarifies that “participation in a venture” (or “group of tow or more individuals
 13 associated in fact”) specifically means knowingly assisting, supporting, or facilitating
 14 a violation of subsection §1591(a). As such “[t]he standard for beneficiary liability is
 15 “higher than under perpetrator liability, requiring a defendant to have actual
 16 knowledge of the purported trafficking and "assist[], support[], or facilitat[e]" the
 17 trafficking venture.” *See Does v. Reddit, Inc.*, 51 F.4th 1137, 1141 (9th Cir. 2022),
 18 petition for cert. filed, U.S.L.W. (U.S. Jan. 25, 2023) (No. 22-695)

19 Again, aside from unexplained conclusory allegations that Eller somehow
 20 controlled “the Venture” (Comp. ¶¶ 7, 120, 303, 310, 332, 341), there are no
 21 plausible factual allegations that Eller actually “participat[ed] in a venture” that he
 22 knew violated § 1591(a), causing Plaintiffs, under force or the threat of force, to
 23 engage in commercial sex acts. There are no factual allegations that Eller knowingly
 24 “assist[ed], support[ed] or facilitate[ed]” any trafficking venture – there are no factual
 25 allegations that Eller took any concrete actions that plausibly caused Plaintiffs to
 26 engage in commercial sex acts. In fact, the allegations in the Complaint, if taken as
 27 true, establish that Eller could neither factually or legally deliver, procure, or

1 prescribe drugs that the Complaint alleges Rick Hubbard obtained in order to
2 somehow force Plaintiffs “to commit sex acts.” (Compl. ¶11)

3 What is more there are no allegations that Eller “knowingly benefit[ed]” from a
4 trafficking venture as required by 18 U.S.C. § 1595(a). For a defendant to
5 “knowingly benefit,” under this statute, he must have benefitted either financially or
6 by receiving a "thing of value" from his participation in the venture. *See Doe v.*
7 *Fitzgerald*, 2022 U.S. Dist. LEXIS 8194, *24.

8 Here the factual allegations in the Complaint on their face only establish that
9 Eller was paid to provide business consulting to Rick Hubbard and provide him with
10 advice in Chet Holmes methods even though Rick Hubbard failed to form a
11 successful legitimate business. (Compl. ¶¶ 116 and 119) This fact is confirmed by an
12 image purported to be a screenshot of a payment that Rick Hubbard made in the
13 amount of \$2000 *to his own business*, TXEcoloft (presumably referring to “Ecoloft
14 Homes LLC”) for Eller’s business consulting services. (Compl. ¶ 126) This
15 screenshot is intended to support the conclusory statement that Rick Hubbard paid
16 Eller a monthly fee “resulting in hundreds of thousands of dollars” over the years.
17 (Compl. ¶ 125) Assuming the allegation that such payments occurred is true, there are
18 no factual, non-conclusory, allegations to reflect that such payments were made for
19 anything other than Eller’s business consulting advice. (Compl. ¶¶ 116, 119, 126.)
20 As such the Complaint fails to state any cognizable claim against Eller for a violation
21 of 18 U.S.C. § 1591 on either a perpetrator or beneficiary theory of liability.

b. Plaintiffs Fails to Allege Any Facts Giving Rise to a Cognizable Claim Against Eller For Violation of 18 U.S.C. § 1589.

25 In order to perpetrate a violation of 18 U.S.C. § 1589 such to be liable for
26 “perpetrator liability” a defendant has to “knowingly provide[] or obtain[] the labor or
27 services of a person” through “(1) by means of force, threats of force, physical
28 restraint, or threats of physical restraint to that person or another person; (2) by means

1 of serious harm or threats of serious harm to that person or another person; (3) by
 2 means of the abuse or threatened abuse of law or legal process; or (4) by means of
 3 any scheme, plan, or pattern intended to cause the person to believe that, if that
 4 person did not perform such labor or services, that person or another person would
 5 suffer serious harm or physical restraint" 18 U.S.C. § 1589(a).

6 Again, there are no factual allegations that Eller "knowingly provided or
 7 obtained the labor or services of Plaintiffs' for anyone through force, threats of force,
 8 physical restraint, harm, threats of harm, abuse of law or legal process. Even if the
 9 seemingly false, unverified, altered and incomplete document embedded in the
 10 Complaint that was purportedly submitted to the Court were taken as true (Compl. ¶
 11 132), there are no factual allegations as to how Eller *knowingly* provided, or obtained
 12 the labor or services from Plaintiff through a document purportedly submitted in a
 13 court proceeding after Hubbard leaves the venture. (Compl. ¶ 132) Moreover, the
 14 Complaint itself confirms that the document was submitted to the Court after
 15 Hubbard left the purported venture. (Compl. ¶ 51) In other words, there is no
 16 allegation of a *quid pro quo* arrangement resulting in Hubbard providing labor or
 17 services based on the submission of the document to the court, or conversely from the
 18 withholding of such submission from the court. Indeed, there could not be any sort of
 19 bargain since the document was alleged to have been submitted in the court custody
 20 proceedings after Hubbard left the Venture. (Id.)

21 The legal standard for "beneficial liability" under § 1589 as set forth by §
 22 1595(a), requires a defendant to knowingly benefit (by receiving anything of value)
 23 from participating in a "venture" that the defendant knew or should have known has
 24 engaged in an act in violation of" §1589. 18 U.S.C. § 1595(a)(emphasis added). For
 25 all the reasons already set forth herein, the Complaint fails to allege any plausible
 26 facts to establish a basis for this theory of liability against Eller. There are no factual
 27 allegations that plausibly establish that Eller actually knew, or should have known,
 28 about a venture that was providing or obtaining the labor or services of Plaintiffs

1 through threats, harm, physical restraint, or abuse of process. Moreover, as set forth
 2 above, the factual allegations in the Complaint, on their face, only establish that Eller
 3 was paid to provide business consulting services to Rick Hubbard to provide him
 4 with advice in Chet Holmes methods. (Compl. ¶¶ 116, 119, 125, 126).

5 As such the Complaint fails to state any cognizable claim against Eller for a
 6 violation of 18 U.S.C. § 1589 on either a perpetrator or beneficiary theory of liability.

7 **2. The Complaint Fails to Set Forth Factual Allegations
 8 Sufficient to Establish a Cognizable Claim against Eller for
 9 Violation of RICO Provisions 18 U.S.C. § 1962(c) or (d).**

10 RICO was "intended to combat organized crime, not to provide a federal cause
 11 of action and treble damages to every tort plaintiff." *Oscar v. Univ. Students Coop.*
 12 *Ass'n*, 965 F.2d 783, 786 (9th Cir. 1992), abrogated on other grounds by *Diaz v.*
 13 *Gates*, 420 F.3d 897 (9th Cir. 2005). Again the shotgun pleading approach of
 14 "everyone did everything" in the Third Cause of Action, violation of 18 U.S.C. §
 15 1962(c) (pattern of racketeering) and the Fourth Cause of Action, violation of 18
 16 U.S.C. § 1962(d) (RICO conspiracy) falls below Rule 8(a) pleading requirements,
 17 and on this basis alone, the Complaint fails to set forth any cognizable RICO claim
 18 against Eller and should be dismissed. *See Destfino*, 630 F.3d at 958, *Sollberger*,
 19 2010 U.S. Dist. LEXIS 66233, *13.

20 **a. Plaintiffs Fails to Allege Any Facts Giving Rise to
 21 a Cognizable Claim Against Eller For Violation of
 22 18 U.S.C. § 1962(c).**

23 In order to set forth a cognizable claim against Eller for a violation of §
 24 1962(c), the Complaint must sufficiently plead facts to establish the following
 25 elements of such claim: (1) conduct, (2) of an enterprise, (3) through a pattern, (4) of
 26 racketeering activity (known as "predicate acts"), (5) causing injury to the plaintiff's
 27 "business or property" by the conduct constituting the violation. *See Living Designs,*
 28 *Inc. v. E.I. Dupont de Nemours & Co.*, 431 F.3d 353, 361 (9th Cir. 2005).

1 With respect to the first element, “conduct,” an individual cannot be liable
 2 under § 1962(c) absent participation in the operation or management of the enterprise
 3 itself. *See Reves v. Ernst & Young*, 507 U.S. 170, 179 (1993). Relevant conduct that
 4 will satisfy this element include whether the defendant “occupies a position in the
 5 chain of command,” “knowingly implements [the enterprise’s] decisions,” or is
 6 “indispensable to achieving the enterprise’s goal.” *Walter v. Drayson*, 538 F.3d 1244,
 7 1248-49 (9th Cir. 2008).

8 An “enterprise” for purposes of the RICO, can be based on an association in
 9 fact, or “group of persons associated together for a common purpose of engaging in a
 10 course of conduct.” *Boyle v. United States*, 556 U.S. 938, 945-46 (2009) (“It is
 11 apparent that an association-in-fact enterprise must have at least three structural
 12 features: a purpose, relationships among those associated with the enterprise, and
 13 longevity sufficient to permit these associates to pursue the enterprise's purpose.”).
 14 Accordingly, RICO defendants must have “some knowledge of the nature of the
 15 enterprise . . . to avoid an unjust association of the defendant[s] with the crimes of
 16 others,” and at a minimum each defendant needs to be “aware of the essential nature
 17 and scope of [the] enterprise and intend[] to participate in it.” *United States v.*
 18 *Christensen*, 801 F.3d 970, 985 (9th Cir. 2015).

19 Setting aside that Plaintiffs have failed to plead facts sufficient to establish (1)
 20 a “pattern” of “racketeering activity” (predicate acts as set forth in 18 U.S.C. § 1961),
 21 the third and fourth elements of a RICO §1962(c) violation, or (2) any injury
 22 whatsoever to Plaintiffs’ “business or property,” the fifth element of a RICO §
 23 1962(c) violation, the Complaint on its face fails to set forth any plausible allegations
 24 that Eller engaged in conduct that furthers the purported enterprise’s purpose. As
 25 such the Complaint fails to set forth allegations that establish any plausible basis for a
 26 cognizable claim under 18 U.S.C. § 1962(c).

27 There are no factual, non-conclusory, allegations that plausibly establish Eller
 28 even had any knowledge of any “enterprise” or was even “indispensable to achieving

1 the [purported] enterprise’s goal” or otherwise knowingly acted in furtherance of the
2 purported enterprise’s purpose. The Complaint’s allegations, when taken as true,
3 establish that Eller was, in fact, irrelevant and dispensable to the purported enterprise.
4 He was factually and legally precluded from prescribing, procuring, or delivering
5 drugs to Plaintiffs (Compl. ¶¶ 11, 14-16, 124, 139), and any alleged filings in a
6 custodial court proceeding involving Hubbard’s parental rights did not direct, affect,
7 alter or impact Plaintiffs’ conduct in any way, or even their rights or benefits, because
8 the purported document was allegedly filed after Hubbard escaped from the purported
9 criminal enterprise. (Compl. ¶¶ 51 and 132)

b. Plaintiffs Fails to Allege Any Facts Giving Rise to a Cognizable Claim Against Eller For Violation of 18 U.S.C. § 1962(d).

In order to be liable as part of a RICO conspiracy, a defendant does not have to have committed the substantive criminal predicate, but has to have knowledge of the nature of the conspiracy, or criminal objective of the conspiracy. *See Salinas v. United States*, 522 U.S. 52, 61-66 (1997); *Howard v. America Online, Inc.*, 208 F.3d 741, 751 (9th Cir. 2000) (the conspirator must have been “aware of the essential nature and scope of the enterprise and intended to participate in it.”) A RICO conspiracy under § 1962(d) may be established by proof of an agreement to commit a substantive violation of RICO. *Oki Semiconductor Co. v. Wells Fargo Bank*, 298 F.3d 768, 774-75 (9th Cir. 2002)(“agreement need not be express as long as its existence can be inferred from words, actions, or interdependence of activities and persons involved.”)

Again as discussed herein, there are no factual, non-conclusory, allegations in the Complaint that plausibly establish Eller had any knowledge of any conspiracy or its purported criminal objective. The Complaint fails to set forth factual allegations from which to reasonably infer an agreement by Eller to participate in any RICO

1 conspiracy. As such, the Complaint fails to set forth any cognizable claim against
2 Eller based on a RICO conspiracy in violation of 18 U.S.C. § 1962(d).

3 **IV. CONCLUSION**

4 For the reasons set forth herein, Defendant Eller seeks dismissal of the
5 Plaintiffs' Complaint pursuant to Fed. R. Civ. P. 12(b)(6) and 8(a).

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9 DATED: March 14, 2023

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